

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

BANS PASTA, LLC, )  
                        )  
Plaintiff,           )  
                        )  
v.                    )  
                        )  
MIRKO FRANCHISING, LLC, *et al.* )  
                        )  
Defendant and       )  
Counterclaim Plaintiff, )                      **Case No. 7:13CV000360**  
                        )  
v.                    )  
                        )  
BANS PASTA, LLC,    )  
                        )  
RANDY A. SOWDEN,    )  
                        )  
and                    )  
MICHAEL X. BOGGINS, )  
                        )  
Counterclaim Defendants. )

**AMENDED SCHEDULING ORDER**

It is **ORDERED** as follows:

**Trial**

1.     This case is set for a five (5) day jury trial in Roanoke, Virginia, to begin at 9:00 a.m. on March 30, 2015.
2.     Proposed jury instructions must be submitted to the court at least seven (7) days prior to trial, with copies provided to opposing counsel.
3.     If the case is settled, the court will dismiss the case from the docket and if no agreed final order or judgment is thereafter submitted within 60 days, or if no party files a motion to reopen within such time, the case shall, without further order, stand dismissed with

prejudice.

### **Motions**

4. A supporting brief must accompany all motions, unless the motion itself contains the legal argument necessary to support it. If the motion is opposed, a brief in opposition must be filed within 14 days of the service of the movant's brief. Except for good cause shown, if a brief opposing a motion is not timely filed, it will be considered that the motion is unopposed. If the moving party desires to submit a reply brief it must be filed within 7 days of the date of service of the brief opposing the motion.

5. If any party desires a hearing on a motion, the hearing may be scheduled with the court prior to or after the filing of the motion, but must be scheduled promptly after the filing of the last brief, or it will be considered that the motion is submitted for decision without hearing.

6. Motions for summary judgment must be filed **no later than December 8, 2014**. Any response to the motion, including the brief in opposition, must be filed no later than 14 days thereafter, with rebuttal briefs filed within 7 days after the opposition's responsive brief. Hearings for motions for summary judgment will be held on **January 30, 2015 at 10:00 a.m.**

7. If a motion is unopposed and the moving party certifies such fact in the motion, no brief need be filed, nor response made to the motion. Procedural motions, including motions for extension of time, whether or not opposed, may be acted upon at any time by the court, without awaiting a response, and any party adversely affected by such action may request reconsideration, vacation or modification of such action.

8. Any motion to join other parties and to amend the pleadings must be filed prior to the cutoff date for discovery.

### **Discovery**

9. All discovery, including depositions, must be completed **no later than November 22, 2014**. This schedule requires that written discovery be served in sufficient time to allow the responding party time to respond before the cutoff date for discovery.

10. Discovery and disclosure material is not to be filed unless and until actually used in the proceeding, except as to the disclosures under Rule 26(a)(3) of trial witnesses and exhibits, which must be filed.

11. All discovery disputes will be heard by the presiding Magistrate Judge.

### **Witnesses**

12. Plaintiff and counterclaim plaintiff must disclose expert testimony as required by Rule 26(a)(2) **no later than October 4, 2014**. Defendants and counterclaim defendants shall make their expert disclosures under Rule 26(a)(2) **no later than November 1, 2014**.

13. Any motion to exclude the testimony of an expert based on the sufficiency or reliability of the expert's testimony must be filed **no later than December 8, 2014**.

14. **At least 21 days prior to trial**, the parties must make the pretrial disclosures of witnesses and exhibits as required by Rule 26(a)(3), and must make counter designations and objections to deposition testimony and exhibits **at least 7 days prior to trial**.

### **Mediation**

15. At any time, the court may refer the case to the magistrate judge to conduct nonbinding mediation. Any party may make a confidential and ex parte request for such mediation.

### Summary of Deadlines

|   |                               |
|---|-------------------------------|
| Trial Date  | March 30 - April 3, 2015      |
| Plaintiff Discloses Expert  | October 4, 2014               |
| Defendant Discloses Expert  | November 1, 2014              |
| Complete Discovery  | November 22, 2014             |
| File Summary Judgment Motions   | December 8, 2014              |
| Motions to Exclude Experts  | December 8, 2014              |
| Argument on Summary Judgment<br>and motions to exclude experts          | January 30, 2015 , 10:00 a.m. |
| Disclose Witnesses and Exhibits   | March 9, 2015                 |
| Submit Jury Instructions  | March 23, 2015                |
| Counter designate and<br>Object to Deposition Testimony<br>and Exhibits | March 23, 2015                |

Enter: August 8, 2014

*Robert S. Ballou*

Robert S. Ballou  
United States Magistrate Judge